



COUNTY OF HUMBOLDT

For the meeting of: 7/6/2023

File #: 23-987

To: Planning Commission
From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Peakview, Inc. Special Permit Modification

Application Number: PLN-2020-16866-MOD01(filed 04/13/2023)

Assessor's Parcel Number: 216-082-002-000 and 216-082-006-000

Harris Area

A Modification to the approved Special Permit (SP) PLN-2020-16866, to relocate the existing approved cultivation area on APN 216-082-002-0002 to different location on the property. The approved SP allows operation of 8,640 square feet of existing mixed-light and 34,920 square feet of new mixed-light cannabis cultivation, for a total of up to 43,560 square feet mixed-light cannabis cultivation on two contiguous parcels (APN 216-082-002 and APN 216-082-006-200-000) with ancillary propagation facilities. Cultivation takes place in one cultivation area consisting of four mixed-light greenhouses. A 12,960-square-foot immature plant propagation area is adjacent to the greenhouses. The project further proposes relocation of the permitted 9,600-square-foot wholesale nursery from APN 216-082-002-000 to APN 216-082-006-000 and repurposing the 4,440 square-foot immature plant propagation nursery and 8,640 square-foot mixed-light greenhouse on APN 216-082-002-000 for immature plant propagation or wholesale nursery activities. A 1-million-gallon rainwater catchment pond is located in the southeast corner of APN 216-082-006-000. Additional proposed water storage consists of ten (10) 5,000-gallon rainwater catchment storage tanks adjacent to the cultivation areas resulting in a total available water storage of 1.05 million gallons. Estimated annual water usage is approximately 600,000 gallons (13.9 gal/SF). Processing, including drying, curing and trimming, occurs onsite in an existing barn on APN 216-082-006-000. Post-processing activities would occur in a proposed 2,500 SF commercial building on APN 216-082-006-000. Up to 12 employees may be utilized during peak operations. PG&E improvements are proposed to move to grid power. The approved project included a Special Permit for development within the SMA for the use of 8,640 square-foot mixed-light greenhouse on APN 216-082-002-000.

RECOMMENDATION(S):

That the Planning Commission:

1. Request that staff present the project.
2. Open the public hearing and receive testimony from the public.
3. Close the public hearing and take the following actions:

4. Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:
 - a. Finds that the Planning Commission has considered the Addendum to the Environmental Impact Report has been prepared for Peakview, Inc. Special Permit Modification for consideration per §15164 of CEQA Guidelines; and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Peakview, Inc. Special Permit Modification subject to the recommended conditions of approval (Attachment 1A); and
 - d. Approves the Cultivation Operations Plan (Attachment 1B) and Site Plan (Attachment 1C).

DISCUSSION:

Project Location: The project is located in Humboldt County, in the Harris area, on the West side of Bell Springs Road, approximately one mile West from the intersection of Harris Road and Bell Springs Road, on the property known as 1340 Bell Springs Road.

Access: The project is located in the Harris area, on the southwest side of Bell Springs Road, approximately 1.4 miles south from the intersection of Alderpoint Road and Bell Springs Road, on the property known as 1340 Bell Springs Road.

Present Plan Land Use Designations: Agriculture Grazing (AG) 2017 General Plan; Density: 20 - 160 acres per dwelling unit; Slope Stability: High Instability (3).

Present Zoning: Agriculture Exclusive (AE-B-5 ([160])).

Environmental Review: An Addendum to a previously adopted Environmental Impact Report has been prepared for consideration per §15164 of CEQA Guidelines.

State Appeal Status: The proposed cultivation area is located outside the Coastal Zone and is therefore NOT appealable to the California Coastal Commission.

Major Issue: None.

Executive Summary: This is a modification of an approved Special Permit to allow for a change in location of the previously approved cannabis cultivation. A Special Permit was approved by the Zoning Administrator on May 6, 2021, authorizing the establishment of 43,560 square feet (sf) of existing and new mixed-light cannabis cultivation in compliance with the County Commercial Cannabis Land Use Ordinance (CCLUO).

The applicant is seeking a Modification of an existing Special Permit (PLN-2020-16866) for the relocation of an approved Mixed Light cultivation area. The previously permitted cultivation area was approved based upon site plan information indicating that no trees would be removed, however after approval it was discovered that while this area may not have had any trees in 2021 at the time of project approval, it was an existing oak woodland prior to January 1, 2016. Section 314-55.4.6.4.2 of

the Commercial Cannabis Land Use Ordinance (CCLUO) states that “*Cultivation site(s) may only be located within a Non-Forested area that was in existence prior to January 1, 2016.*” The CCLUO further defines a Non-Forested area as any area not containing trees.

The modification is proposed in two (2) phases. Phase 1 of the proposed modification is to utilize a natural flat area in the northeastern portion of APN 216-082-006-000. This area has already been graded and greenhouses have been erected, prior to obtaining approval of the modification. Of note is that the applicant has stated that this area did not require more than 50 cubic yards of grading and his engineer advised him that no grading permit was needed. There is evidence that this was an existing bench area, however CDFW staff has also visited the site and stated that they believe more than 50 cubic yards of grading occurred.

Phase 1 would consist of seven (7) 20’x100’ greenhouses totaling 14,000 square feet of cultivation area to be utilized for outdoor light deprivation cultivation. The Phase 1 temporary hoop houses will be equipped with blackout tarps for light deprivation to achieve two harvest cycles per annum. This will allow the applicant to cultivate while phase 2 grading and infrastructure are completed. In this second Phase, 34,560 sf cultivation will be allocated within four (4) 90’x96’ hoophouses (34,560 sf) on two graded flats that each have an area of 36,000 sf. These greenhouses would be required to be outdoor only until either PG&E or on-site renewable energy has been developed. Part of the justification for relocating to this area is that it is close to the public road where PG&E may be available to serve the cultivation activities. The graded flats have had a grading plan created by A.M. Baird Engineering and Surveying, Inc. dated September 30, 2021 (**Attachment 4**) and A.M. Baird provided a letter stating that the grading plan was developed to ensure that the proposed flat areas are occurring on existing slopes of less than 15% (Attachment 4). Unfortunately this grading plan does not include the existing topographic contours and the overall elevation difference over the proposed graded area is significant. Planning staff conducted a site visit on May 5, 2023 to inspect the site and measure the slopes in the areas of Phase 2 to be graded using a clinometer which read between 10% and 13%. However, some of areas between and adjacent to the flats were in excess of 15% and the grading proposed in the attached grading plan may extend onto slopes over 15% in grade. Given that the grading plan does not include existing topographic information is unclear to what extent grading might extend onto over 15% slopes. Accordingly, staff is recommending a condition of approval that would require the grading plan to show existing topographic contours and the grading plan to be revised as necessary to ensure that no areas over 15% existing grade will be altered (Condition A6).

A 12,960-square-foot immature plant propagation area is proposed adjacent the Phase 2 greenhouses on APN 216-082-002-000, however staff is recommending that this immature plant area be limited to 4,356 square-feet, or 10% of the total permitted cultivation area (Condition A20). The project further proposes relocation of the 9,600-square-foot wholesale nursery from APN 216-082-002-000 to APN 216-082-006-000 and repurpose the 4,440 square-foot immature plant propagation nursery. The 8,640 square foot mixed light greenhouse on APN216-082-002-000 will remain in its current location and be powered by generators. Estimated annual water usage is approximately 600,000 gallons (13.9 gal/SF). Processing, including drying, curing and trimming, occurs onsite in an existing barn on APN 216-082-006-000. Post-processing activities would occur in a proposed 2,500 SF commercial building on APN 216-082-006-000. Up to 12 employees may be utilized during peak operations.

All other aspects of the original project will remain in place. The distance of the proposed temporary cultivation area from the original proposed and approved cultivation area is approximately 800 feet.

Power

The approved project was conditioned to transfer onsite power from generator use to onsite Pacific Gas and Electric (PG&E), as proposed by the applicant in the supporting Operations Plan and was to be completed by December 31, 2025. A bill or written communication from PG&E submitted to the Humboldt County Planning Department was to be submitted from the applicant to satisfy this condition.

Water Resources

Existing available water storage is a 1-million-gallon rainwater catchment pond located in the southeast corner of APN 216-082-006 and additional proposed water storage consists of ten (10) 5,000-gallon rainwater catchment storage tanks for a total available water storage of 1.05 million gallons. Estimated annual water usage is approximately 600,000 gallons (13.9 gal/SF). The rainwater catchment pond was constructed in September 2020 originally as a livestock pond and all management measures identified in the Grading and Erosion Control Plan and Soils Report were implemented for the parent project. The building and grading permit for this pond has been finalized (BLD2020-51973).

Tree Removal and Restoration

The original application for Special Permit (PLN-2020-16886) showed new cultivation where trees were present as of January 1, 2016. Tree removal and grading occurred between 2019 and 2020, however was represented on the site plan as a “treeless” area. The Cultivation and Operations Plan and Site Plan both indicated no tree removal was proposed. Unfortunately, it was only after approval of the project that staff discovered the updated GIS imagery showing the cleared areas. As mentioned above the CCLUO, Section 55.4.6.4.2, prohibits cultivation sites located in forested areas in existence prior to January 16, 2016. On March 5, 2021, CALFIRE provided a referral comment (**Attachment 5**) with a recommendation of denial of the project specifying that a harvest document from CALFIRE should have been obtained prior to the removal of the trees.

The applicant submitted a Timberland Conversion Evaluation Report July 12, 2021 that was conducted June 16, 2021 by Blair Forestry, LLC for APN 216-082-006-000 (**Attachment 4**). The Registered Professional Forester (RPF) reported that historical imagery of the parcel didn't show any apparent changes to the timberland until 2020 and that the approximate total removal was 2.24 acres, which is consistent with a Less Than 3-Acre Conversion Exemption (14 CCR 1104.1). The RPF reported personal correspondence with the applicant in which the applicant described a scenario in which a large oak had fallen into an existing well and that the applicant removed it along with a handful of other trees creating the open space. The RPF reported approximately 10 to 13 trees were removed including three (3) Douglas firs and true oaks (mostly black oak). Overall, the RPF stated that the unauthorized conversion generally met the standards set forth in the CFPRs concerning 14 CCR 1104.1 and that the conversion did not exceed 3 acres and the RPF had no recommendations necessary to bring the Conversions Sites into compliance with provisions of the Forest Practices Act, specifically 14 CCR 1104.1.

An Oak Woodland Restoration Plan (OWRP) was also requested by the Planning Department and submitted by Timberland Resource Consultants (TRC). The intent of the investigation was to assess the proposal to restore oak woodland within the subject property and, where appropriate, to provide management recommendations in order to mitigate any adverse ecological effects associated with conversion activities. The OWRP discussed the ecological values of the oak woodland habitat associated with post-2015 tree removal and loss of oak woodland located within APN 216-082-002-000 (1.50 acres) and APN 216-082-006-000 (2.24 acres). The OWRP analysis included the review of a variety of historical images dating back to 1968, site reconnaissance, and observations/conclusions. TRC's investigation focused on existing oak woodland and evaluating the potential to either augment habitat, or to restore encroached oak woodland where feasible at a ratio of 3:1 for all areas on both APN 216-082-002-000 and 216-082-006-000. The 3:1 mitigation equates to 11.22 acres of restoration of oak woodland. The restoration plan included the removal of Douglas-fir up to 12" DBH (80% removal goal), retain all living oaks and snags greater than 10 inches in diameter, etc. These restoration plan activities are included in the conditions of approval (**Condition A7**). A condition of approval would also require this site to be regraded to its pre-conversion natural conditions (Condition A13).

Biological Resources

The applicant submitted a *Biological Assessment* for the proposed relocation areas, prepared by Kyle S. Wear, Biological Consultant, April 4, 2022. The proposed relocation areas are grassland dominated (90% or more) by a non-native species, Harding grass (*Phalaris aquatica*). A *Nesting Bird & Pre-construction Survey* was conducted July 5, 2022 and a *Botanical Survey* was conducted July 5, 2022 by Leopard Wildlife Associates (Attachment 4).

No special status plants were observed on the relocation areas, and a botanical survey was completed over two site visits. The subject parcels do include habitat for several special status plants, of which three taxa are associated with grasslands like the relocation areas, however, the heavy infestation of Harding grass, dry conditions, absence of any special status species, and the lack of more mesic grasslands. The criterion for a grassland to be considered a special status grassland was not met due to the high infestation of Harding grass, even with a <1% coverage of California oatgrass (*Danthonia californica*).

Special status wildlife was assessed and no mature forests, snags, caves, waterbodies, riparian vegetation, or other habitat likely to provide nesting or foraging habitat for most sensitive wildlife species within or near the relocation areas. There is, however, potential foraging habitat for raptors such as golden eagle (*Aquila chrysaetos*) and Cooper's hawk (*Accipiter cooperii*).

With regard to aquatic resources, there were no indicators of wetlands such as standing water, saturated soil, or hydrophytic vegetation like stands of sedges or rushes within or near the relocation areas. The relocation sites appeared to be outside the streamside setbacks. Overall, the assessment cultivation relocation on the proposed relocation areas will impact the invasive Harding grass-dominant grassland. According to the assessment, there is a less than significant risk of impacts to sensitive biological resources.

Nesting Bird & Pre-construction Survey

The survey was conducted on July 3, 2022. The objective of the survey was to search for active nests and or avian breeding behavior in the project area. Denning badgers were also surveyed for. No nesting birds or badger dens were observed in association with the project area. However, heavy ground disturbance indicative of feral pigs was observed, and in addition to one boar, turkey vulture, California Quail, Savannah Sparrow, Barn Swallow, Common Raven, and Retail Hawk were also observed in association with the project area.

On June 1, 2023, the California Department of Fish and Wildlife staff conducted a site inspection at the subject property. During the site visit, CDFW states that they observed evident signs of failure due to grading at both the phase 1 area and the oak conversion area, including stress cracks and slope failure from oversteepened banks. Accordingly, as a condition of project approval, the applicant will be require to hire an engineer or geologist to assess the phase 1 and oak conversion areas. The banks should be laid back to slopes that are stable. CDFW also requested that a qualified professional geologist assess the graded site and provide specific prescriptions to fix the failures associated with the grading (Condition A12). CDFW additionally has requested that the oak woodland conversion site is fully recontoured and restocked back to pre-conversion natural conditions (Condition A13). The applicant states that the site was naturally flat and that no significant grading has occurred at the site location, however, CDFW has stated that they believe significant grading in excess of 50 cubic yards had occurred. A letter from the applicants engineer stating that no grading permit was required in this area is attached to this staff report as part of Attachment 4. CDFW noted that stress fractures and bank failure due to grading from over-steepened and uncompacted fill have caused soil erosion to discharge to the Streamside Management Area (SMA) and channel of a Class III stream.

CDFW noted that the project plan stated, as part of phase 2 of the project, the cultivation would be relocated to a naturally flat area within a meadow adjacent to the existing irrigation pond. The project plan states that the meadow site is considered an environmentally superior site, as it will allow PG&E to provide power to the cultivation site located on APN 216-082-006-000. However, it is unclear if the proposed project intends to connect to PG&E. CDFW noted the relocation of cannabis cultivation to the meadow site does not appear to offer an environmentally superior location to cultivate cannabis and has the potential to modify the natural hydrology by increasing storm runoff to headwater streams. CDFW has recommended that the project remain entirely on the graded site that was proposed as the phase 1 site and or/ within the converted area. However, as mentioned previously, the converted area cannot be utilized for cannabis cultivation pursuant to the County ordinance, and the phase 1 flat cannot accommodate the full one-acre of cannabis that is proposed. Additionally, the proposed phase 2 area is closer to the public road where PG&E would be more likely to be available. A recommended condition of approval requires submittal of a drainage and erosion control plan demonstrating no substantial increase in peak flows towards headwater streams (Condition A14.)

CDFW commented that the proposed project states that 12,960 square feet of immature plant propagation is proposed, which is ~30% of the proposed 43,560 square feet (1 acre) of cannabis cultivation and the amount of immature plant propagation appears to be an overallocation of the allowed ancillary nursery for the project. This observation was incorrect, however. The proposed ancillary nursery area is 4,400 square feet, which is approximately 10% of the approved 43,560 square

feet of cultivation area. The confusion in the total square footage comes from there 9,600 square foot wholesale nursery area, which is not included in the ancillary nursery area total, as it is an alternate form of primary cultivation. An explanation of the cultivation area breakdown was provided to CDFW on June 9, 2023 (**Attachment 4**).

A Lake and Streambed Alteration Agreement (LSA) (**Attachment 5**) obtained by the applicant in November 2020 includes an agreement to upgrade 15 stream crossings on the project parcels by October 15, 2024. CDFW noted that as of the June 1, 2023 site inspection, no stream crossings had been upgraded. As a condition of approval, the stream crossings shall be upgraded no later than October 15, 2024, as is consistent with the LSA (Condition A15)

Tribal Consultation:

The project is located in the Bear River band and Sinkyone Aboriginal Ancestral Territories. The project was referred to the Northwest Information Center (NWIC), Bear River Band Tribal Historic Preservation Officer and the Sinkyone Intertribal Wilderness Council on May 4, 2023. A Cultural Resource Investigation Report was prepared in November 2018 by Archaeological Research and Supply Company for the previously approved project (On file and confidential). The Cultural Resource Investigation Report included the Phase one (1) and two (2) proposed cultivation areas as part of the survey area. For the proposed modification to the approved project, the THPO recommended that inadvertent discovery protocol be a condition of project approval. Ongoing conditions of approval are incorporated regarding compliance with the recommendations of the Cultural Inventory and the Inadvertent Discoveries Protocol to protect cultural resources (**Ongoing Condition B19**).

The Division of Environmental Health was referred the project on May 4, 2023. On DEH conditionally approved the project specifying they have no record of the two (2) water wells existing on APN 216-082-006 as shown on the provided site plan (prepared by Clearwater Ag Services, dated 4/7/22). The Owner shall either provide evidence of permits, destroy the wells, legalize the wells through installation of new sanitary surface seals, or provide compelling evidence that the wells were installed prior to February, 1973.

Processing and wholesale nursery activities must be supported by an approved onsite wastewater treatment system. Seasonal/outdoor cultivation sites may be supported by portable toilets. The Applicant must obtain a permit for, and install, an approved onsite wastewater treatment system to support the processing/nursery locations and either install approved septic systems or provide portable toilets to cultivation areas. The project has been conditioned to incorporate these specifications.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comment or recommended approval or conditional approval. (**Attachment 5**)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect not to approve the project, or to require the applicant to

submit further evidence, or modify the project. If modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all of the required findings. Planning staff has stated that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.

2. The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the EIR for the CCLUO as stated above. However, the Commission may reach a different conclusion. In that case, the Commission should continue the item to a future date at least two months later to give staff the time to complete further environmental review.

ATTACHMENTS:

1. Draft Resolution
 - A. Conditions of Approval
 - B. Cultivation Operations Plan
 - C. Site Plan
2. Location Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
5. Referral Agency Comments and Recommendations
6. Watershed map

Owner

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Please contact Portia Saucedo, Associate Planner II, at (707) 268-3745 or by email at psaucedo1@co.humboldt.ca.us, if you have any questions about the scheduled public hearing item.